

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0542
Sales and Use Tax
For the Years 1999, 2000, 2001

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ISSUES

I. Sales and Use Tax-Supplies

Authority: IC 6-2.5-3-2 (a), IC 6-2.5-5-25 (a), IC 6-8.1-5-1, Sales Tax Division Information Bulletin #10 Revised February 10, 1986.,

The taxpayer protests the assessment of use tax on certain supplies.

II. Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2.

The taxpayer protests the assessment of the negligence penalty.

STATEMENT OF FACTS

The taxpayer is a not-for-profit corporation created to receive, hold, administer and disburse funds to be used in promoting and advancing the general contracting industry in a certain geographic area of the state. The taxpayer provides assistance in construction employee apprenticeship programs, encouragement of programs to employ members of minority groups, advance skill training, supervisory training, construction technical education, safety education, accident prevention, and approved Red Cross certification program. After an investigation, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional use tax, interest, and penalty. The taxpayer protested the assessment and a hearing was scheduled for April 27, 2004. No one appeared for the hearing. Therefore, this decision is based upon the information contained in the file.

I. Sales and Use Tax- Supplies

DISCUSSION

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b). Indiana imposes an excise tax on tangible personal property stored, used, or consumed in Indiana unless the sales tax is paid on the transaction. IC 6-2.5-3-2 (a). Exemption from the use tax is granted to property used by qualified not-for-profit organizations under certain conditions at IC 6-2.5-5-25 (a) as follows:

Transactions involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service:

(a) is an organization which is granted a gross income tax exemption under IC 6-2.1-3-20, IC 6-2.1-3-21, or IC 6-2.1-3-22;

(2) primarily used the property or service to carry on or to raise money to carry on the not-for-profit purpose for which it receives the gross income tax exemption; and

(3) is not an organization operated predominantly for social purposes.

Sales Tax Division Information Bulletin #10 Revised February 10, 1986 further clarifies the exemption of not-for-profit corporation purchases for its own use from the use tax as follows:

1. In order to qualify for sales tax exemption on purchases as a not-for-profit organization the following conditions must prevail:

(a) The organization must be named or described in IC 6-2.1-3-19, 6-2.1-3-20, 6-2.1-3-21 or 6-2.1-3-22. This includes not-for-profit organizations organized and operated exclusively for one or more of the following purposes. . . Educational

(c) The organization is not operated predominantly for social purposes.

(d) In order for a purchase by a not-for-profit organization to qualify for exemption, the article purchased must be used for the same purpose as that for which the organization is being exempted. Purchases for the private benefit of any member of the organization or for any other individual, such as meals or lodgings, are not eligible for exemption. Purchases used for social purposes are never exempt.

The taxpayer provides a plan room where members from the construction industry can come to review building plans and blue prints for construction projects that are up for bids. In this room, drafting supplies, paper, and printing equipment are available for the contractors' use. The taxpayer did not pay sales tax when it purchased these supplies. Therefore, the department imposed use tax on the use of these items. The taxpayer argued that the use tax was improperly imposed because the items were used for an exempt purpose. The department disagrees with this

conclusion. Rather the supplies are used for the private benefit of the individual members of the association. They are not used for the exempt activities of the organization.

FINDING

The taxpayer's protest is denied.

II. Tax Administration-Penalty

DISCUSSION

The taxpayer's final protest concerns the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Negligence is defined at 45 IAC 15-11-2(b) as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2 (c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed. . . ." The taxpayer presented substantial evidence showing that it met this burden. The negligence penalty does not apply in this situation.

FINDING

The taxpayer's protest is sustained.